

## **REMARKS**

Claims 1-20 and 26 were examined and rejected. Claims 21-25 have been previously canceled. Applicant amends claims 1, 10, 11, 14, and 17-19. Applicant asserts that no new matter is added herein as amendments to claim 1 are supported at page 1, lines 9-12; page 3, line 31 through page 4, line 7; and **Figures 1, 3-5, and 7** of the application as originally filed. Similarly, amendments to Claim 11 are supported at page 4, lines 2-4; page 4, lines 13-14; and **Figures 3-5 and 7** of the application as originally filed. Applicant respectfully requests reconsideration of Claims 1-20 and 26 as amended in view of at least the following remarks.

### **I. Claims Objected to**

Claim 10 is objected to because it states "the anemometry circuitry interface," and Claim 1 only refers to "an interface." Applicant amends Claim 10 to remove the terms "anemometry circuitry" from Claim 10. Hence, Applicant respectfully requests that the Patent Office withdraw the above objection.

### **II. Claims Rejected Under 35 U.S.C. §103**

Claims 1-3, 5-9, 11-12, 14-20, and 26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,063,085 to Tay, et al. ("Tay") in view of U.S. Patent No. 6,539,792 to Lull, et al. ("Lull"). To render a claim obvious, all elements of that claim must be taught of suggested by at least one properly combined reference.

Applicant respectfully disagrees with the rejection above and submits that independent Claim 1, as amended, is patentable over the cited references for at least the reasons that the cited references do not teach or suggest an elongated member having a dimension suitable for insertion into a body, a distal opening, and a lumen in communication with the opening to allow a substance to be delivered through the lumen and out of the opening, as required by amended Claim 1. According to Claim 1, for example, the elongated member may have a lumen in contact with a

distal aperture so that a drug pharmaceutical agent, fluid, protein, polypeptide, gene therapy material, cell therapy material, and/or deoxyribonucleic acid (DNA) can be injected into a vessel or tissue of a person.

Tay teaches an apparatus for closing and sealing a vascular puncture by generating sufficient heat to fuse the vascular tissue together. (See Abstract). Tay teaches that the puncture may have previously been caused by a needle or similar device. (See paragraph 1, lines 35-47; col. 5, lines 15-18; and col. 5, lines 40-45). However Tay teaches that the needle or similar device is removed prior to inserting a cautery probe, such as a probe tipped with cauterizing electrodes to cauterize tissue surrounding the puncture, and optionally having coils of temperature-dependent resistant wire on the probe. (See col. 1, lines 40-41; col. 5, lines 21-62; col. 20, lines 42-54; and Figures 10-11, 19-20, and 26-32). Moreover, Tay describes the cautery probe as a monopolar electrode or bipolar electrode probe connected to a power supply and having an inside containing insulation, electrodes for carrying enough current to cauterize tissue, and/or a guidewire disposed therethrough (See col. 15, lines 36 through col. 16, line 52). Specifically, although Tay allows for the possibility of blood flowing out of the puncture in the vessel and through insulation layer 137 and out of hole 138, Tay does not teach or suggest delivering a substance in the opposite direction, such as a fluid delivered at a pressure greater than that of this blood flow. For instance, in Tay, the primary purpose is to seal the puncture and stop the blood flow. (See col. 15, lines 54 through col. 16, line 11; and Figure 20 and 28). Consequently, the Patent Office has not identified and Applicant has been unable to find any teaching or suggestion in Tay of a probe including a distal opening a lumen in communication with the opening to allow a substance to be delivered through the lumen and out of the opening, as required by amended claim 1.

Next, Lull teaches a method and apparatus for balancing resistance, such as to determine a mass float rate of a gas or other fluid, in a pipe. (See Abstract, and col. 1, lines 10-50). Moreover, Lull teaches applications such as automotive applications, hot-wire anemometry, or other applications in which variations in the resistance of a leg of a resistive bridge circuit is indicative of a change in a property that varies

with resistance. (See col. 17, lines 4-15). However, the Patent Office has not identified and Applicant is unable to find any teaching or suggestion in Lull of an elongated member having a dimension suitable for insertion into a body, a distal portion suitable for insertion into tissue, a distal opening, and a lumen in communication with a distal opening to allow a substance to be delivered through the lumen and out of the opening, as required by amended claim 1.

Hence, since neither Tay, Lull, nor the combination teaches or suggests the above noted limitation of amended Claim 1, Applicant respectfully requests that the Patent Office withdraw the above rejection of Claim 1.

Since the cited references do not teach the above-noted limitation of amended Claim 1, Applicant asserts that Claims 2-3, and 5-9 being dependent upon allowable base Claim 1, are also allowable for the same reasons described above. Hence, Applicant respectfully requests the Patent Office withdraw the rejection above for those dependent claims.

Moreover, Applicant disagrees with the rejection above and submits that independent Claim 11, as amended, is patentable over the cited references for at least the reason that the cited references do not teach or suggest a needle having dimension suitable for insertion into a body, and having a distal end capable of puncturing skin, as required by amended Claim 11. An analogous argument to the one provided above with respect to Claim 1 applies here as well. Specifically, Tay teaches a cautery probe for cauterizing a puncture in a vessel made by a needle, after the needle has been removed. However, Tay does not teach or suggest that the cautery probe has a distal end capable of puncturing skin as required by amended Claim 11. Also, Lull does not teach a needle, as required by Claim 11.

Hence, since neither Tay, Lull, nor the combination teach the above-noted limitation of amended Claim 11, Applicant respectfully requests the Patent Office withdraw the rejection above of Claim 11.

Since the cited references do not teach the above-noted limitations of amended Claim 11, Applicant asserts that Claims 12, 14-20, and 26, being dependent upon allowable base Claim 11, are also allowable for the reasons explained above. Hence, Applicant respectfully requests the Patent Office withdraw the rejection for those dependent claims.

In addition, Applicant traverses that although Tay fails to disclose the heating element being between 0.01 inches and 0.400 inches, a change in size of a prior device is a design consideration within the skill of art, and requests that the Patent Office cite a reference in support of that position in accordance with MPEP § 2144.03.

Claims 4 and 13 are rejected under 35 U.S.C. § 103(a) by Tay, Lull, and further in view of U.S. Patent No. 3,470,604 to Zenick (Zenick). Claims 4 and 13 are dependent claims as they depend on independent claims 1 and 11. Applicant submits that dependent claims 4 and 13, being dependent upon independent claims 1 and 11, are patentable over the cited references for the reasons explained above. Thus, Applicant respectfully requests that the Patent Office withdraw the rejection of dependent claims 4 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Tay, Lull, and further in view of Zenick.

Claims 10 and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tay in view of Lull, and further in view of U.S. Patent No. 5,873,835 to Hastings et al. (Hastings). Applicant submits that claims 10 and 18, depending from claim 1, are patentable over Tay in view of Lull, and further in view of Hastings. Thus, Applicant respectfully requests that the Patent Office withdraw the rejection of dependent claims 10 and 18 under 35 U.S.C. § 103(a).

### CONCLUSION

In view of the foregoing, it is believed that all claims now pending (1) are in proper form, (2) are neither obvious nor anticipated by the relied upon art of record, and (3) are in condition for allowance. A Notice of Allowance is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly, extension of time fees.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR, & ZAFMAN LLP

Date: 5/20/05

William V Babbitt  
William Thomas Babbitt, Reg. No. 39,591

12400 Wilshire Boulevard  
Seventh Floor  
Los Angeles, California 90025  
(310) 207-3800

#### CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, Post Office Box 1450, Alexandria, Virginia 22313-1450 on May 20, 2005.

Lillian E. Rodriguez 5-20-05  
Lillian E. Rodriguez May 20, 2005